

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ANDREW CASTERLINE,

Petitioner,

v.

BRAD HANSEN,

Respondent.

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8:18CV368

MEMORANDUM AND ORDER

Respondent has filed a motion to dismiss (filing no. 14) this petition without prejudice because Petitioner has exhausted only one of his claims leaving the other unexhausted. Respondent does not believe I should follow the “stay and abeyance” procedure that would involve this case being stayed in this court while Petitioner was allowed time to exhaust his state court remedies. Respondent, acknowledging that the lack of exhaustion was at least partially the fault of a state actor (clerk of court), wants Petitioner to return to state court to complete the exhaustion of the state-post conviction matter while dismissing the pending matter without prejudice. Having read the motion and brief of the Respondent.

IT IS ORDERED that:

1. No later than the close of business on November 16, 2018, Respondent shall file a brief (a) stating specifically how much time would be left on the § 2244(d)(f) limitations period should I grant the motion to dismiss without prejudice and (b) whether Respondent would agree not to assert a § 2244(d)(f) defense so long as Petitioner acted promptly.

2. No later than the close of business on December 17, 2018, Petitioner shall respond to the Respondent’s motion by submitting a brief.

DATED this 6th day of November, 2018.

BY THE COURT:

s/ Richard G. Kopf

Senior United States District Judge